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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 860

LEWSON TELEVISION, INC., a Body Corporate of the State of Maryland, *Petitioner*,

v.

D. H. OVERMYER LEASING CO., INC., a Body Corporate of the State of Delaware, *Respondent*.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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The District Court opinion is reported in 43 FRD 5.

The opinion of the Fourth Circuit Court of Appeals is reported 401 F. 2d 689.

The Petition for Certiorari should be denied as prematurely filed since the judgment sought to be reviewed (Appendix to Petition, p. 17a) remands the cause "with direction for trial on the merits." The opinion

below clearly shows that the application of a New York statute is crucial to the case, and the Court of Appeals holds this "must await full development of the facts" (id. 16a).

Petitioner does not claim this case is of such character as this Court has outlined in Rule 19(1)(b). Indeed, no particular assignment of "reasons relied on for allowance of the writ" is made as contemplated by Rules 19 and 23(h). The argument suggests only that the Court of Appeals erred in holding there are unresolved facts to be settled by a trial.

Nothing is better established than the rule that this Court does not sit to correct error, especially on interlocutory orders for trial on the merits. Petitioner asks this Court to grant certiorari and substitute its appraisal of unsettled facts for a decision by the Court of Appeals that those facts should be settled by jury trial. This is certainly not the function of this Court under the authorizing statutes and cases, as well as the Court's own Rules. Clearly the petition should be denied as prematurely filed.

Respectfully submitted,

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